

This rule was adopted on an emergency basis effective July 1, 2005. It may be used to determine tax liability until October 28, 2005, unless the Department adopts a permanent rule prior to this date.

AMENDATORY SECTION: Amending WSR 90-10/081, filed 5/2/90, effective 6/2/90)

WAC 458-20-257 Warranties and maintenance agreements.

(1) **Introduction.** This section explains the business and occupation (B&O), retail sales, and use tax reporting responsibilities of persons selling warranties or maintenance agreements. Chapter 514, Laws of 2005, sections 101 through 112, changed the tax consequences for extended warranties by classifying the sale of an extended warranty as a retail sale. This change in law is effective July 1, 2005 and did not affect the taxability of maintenance agreements and warranties included in the selling price (for example manufacturers' warranties).

(2) **Definitions.** For the purposes of this section, the following terms will apply:

(a) Warranties. Warranties, sometimes referred to as guarantees, are agreements which call for the replacement or repair of tangible personal property with no additional charge or a reduced charge for parts or labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based upon the happening of some unforeseen occurrence or specified events, e.g., the property needs repair within the warranty period.

(b) Warrantor. The warrantor is the person obligated, as specified in the warranty agreement, to perform labor and/or provide materials to the owner of the personal property to which the warranty agreement relates.

(c) Extended warranty. An extended warranty is a warranty for a specific duration for which a separate charge is made.

(d) Maintenance agreements. Maintenance agreements sometimes referred to as service contracts, are agreements which require the specific performance of repairing, cleaning, altering, or improving of tangible personal property on a regular or irregular basis to ensure its continued satisfactory operation.

~~((+2+))~~ (3) **B&O Tax.**

(a) ~~((Manufacturer's-w))~~ Warranties included in the retail selling price of the article being sold.

(i) When a ~~((manufacturer's))~~ warranty is included in the retail selling price of the property sold and no additional charge is made, the value of the warranty is a part of the selling price. The value of the warranty is included in the "gross proceeds of sale" of the article sold and reported under the appropriate classification, e.g. retailing, wholesaling, etc.

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(ii) When a repair is made by the (~~manufacturer~~) warrantor under the warranty, the value of the labor and or parts provided are not subject to B&O tax.

(iii) When a person other than the (~~manufacturer~~) warrantor makes a repair for the (~~manufacturer~~) warrantor, the person making the repair is making a wholesale sale of the repair service to the (~~manufacturer~~) warrantor. The person doing the repair is B&O taxable under the wholesaling classification on the value of the parts and labor provided.

(b) Extended warranties on or after July 1, 2005.

(i) When an extended warranty is sold for resale, the seller must receive a resale certificate from the buyer to document the wholesale nature of the transaction. The gross proceeds are reported under the wholesaling classification.

(ii) When an extended warranty is sold to a consumer, the sale is at retail and retailing B&O tax applies.

(iii) When the warrantor under an extended warranty makes a repair under an extended warranty, there is no B&O tax due except as provided in subsection 6 of this section.

(iv) When a person other than the warrantor makes a repair for the warrantor on or after July 1, 2005, the person making the repair is making a wholesale sale of the repair service to the warrantor. The person making the repair is B&O taxable under the wholesaling classification and must receive a resale certificate from the buyer to document the wholesale nature of the transaction.

(c) Extended warranties on or before June 30, 2005. Extended warranties were previously referred to as nonmanufacturer's (~~Nonmanufacturer's~~) warranties and manufacturer's warranties not included in the retail selling price of the article being sold.

(i) When an extended warranty is sold on or before June 30, 2005 for a charge separate from the charge of the product, e.g., a warranty extending the manufacturer's warranty, the charge is reported in the service and other activities classification of the B&O tax.

(ii) When a repair is made by the warrantor under a separately stated warranty, the value of the labor and or parts provided are not subject to B&O tax.

(iii) When a person other than the warrantor makes a repair on or before June 30, 2005 for the warrantor, the person making the repair is making a retail sale of the repair service to the warrantor. The person making the repair is B&O taxable under the retailing classification.

(~~(e)~~)(d) Maintenance agreements.

(i) Maintenance agreements (service contracts) require the periodic specific performance of inspecting, cleaning,

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physical servicing, altering, and/or improving of tangible personal property. Charges for maintenance agreements are retail sales, subject to retailing B&O tax and retail sales tax under all circumstances.

~~((d))~~(e) Amounts received as a commission or other consideration for selling a warranty, extended warranty, or maintenance agreement of a third-party warrantor or provider are generally subject to B&O tax under the service and other activities classification. However, if the seller of the warranty or extended warranty is licensed under chapter 48.17 RCW with respect to this selling activity, the commission is subject to B&O tax under the insurance agent classification.

~~((e))~~(f) In the event a warrantor purchases an insurance policy to cover the warranty, amounts received by the warrantor under the insurance policy are insurance claim reimbursements not subject to B&O tax.

~~((3))~~(4) **Retail sales tax.**

(a) ~~((Manufacturer's warranties))~~ Warranties included in the retail selling price of the article being sold.

(i) When a ~~((manufacturer's))~~ warranty is included in the retail selling price of the property sold and no additional or separate charge is made, the value of the warranty is a part of the selling price and retail sales tax applies to the entire selling price of the article being sold.

(ii) Except as provided in subsection 6 of this section, when ~~((When))~~ a repair is made by the ~~((manufacturer--))~~ warrantor under the warranty, the repair performed is not a retail sale and no retail sales tax is collected.

(iii) When a person other than the ~~((manufacturer--))~~ warrantor makes a repair for the ~~((manufacturer--))~~ warrantor, the person making the repair is making a wholesale sale of the repair service to the ~~((manufacturer--))~~ warrantor. No retail sales tax is collected from the ~~((manufacturer--))~~ warrantor.

(b) Extended warranties on or after July 1, 2005.

(i) Extended warranties sold to a consumer on or after July 1, 2005 are retail sales and retail sales tax must be collected. It is irrelevant if the sale of the tangible personal property that is the covered by the extended warranty is exempt from retail sales tax. For example, retail sales tax applies to a sale of an extended warranty on equipment exempt from the retail sales tax per RCW 82.08.02565 (commonly referred to as the "M&E exemption).

(ii) For the purposes of determining the appropriate local retail sales tax rate and taxing jurisdiction:

(A) The sale of an extended warranty is deemed to occur at the business location of the seller if the extended warranty is received by the purchaser at that location.

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(B) If the extended warranty is not received by the purchaser at the business location of the seller, the sale is deemed to occur at the location where receipt by the purchaser occurs.

(iii) Except as provided for in subsection 6 of this rule, retail sales tax does not apply to parts or contracted services to fulfill an extended warranty after June 30, 2005 regardless of when the extended warranty was purchased.

(c) Extended warranties on or before June 30, 2005. Extended warranties were previously referred to as nonmanufacturer's ((Nonmanufacturer's)) warranties and manufacturer's warranties not included in the retail selling price of the article being sold.

(i) When an extended warranty is sold on or before June 30, 2005 for a charge separate from the charge of the product, e.g., a warranty extending the manufacturer's warranty, the sale is not a retail sale and no retail sales tax is collected on the amount charged.

(ii) Except as provided in subsection 6, below, when ((When)) a repair is made by the warrantor under its own separately stated warranty, the value of the labor and/or parts provided is not a retail sale and no retail sales tax is collected.

(iii) On or before June 30, 2005, when ((When)) a person other than the warrantor makes a repair for the warrantor, the person making the repair is making a retail sale of the repair service to the warrantor. Retail sales tax is collected from the warrantor measured by the labor and materials provided.

((+e)) (d) Maintenance agreements are sales at retail and subject to retail sales tax under all circumstances.

(i) Parties subcontracting to the party selling the maintenance agreement are making sales at wholesale, and are required to take from their customer (maintenance seller) a resale certificate as provided in WAC 458-20-102.

((+4)) (5) Use tax.

(a) ((Manufacturer's warranties)) Warranties included in the retail selling price of the article being sold.

(i) When a ((Nonmanufacturer)) warrantor makes repairs required under its warranty, the value of the parts used in making the repairs is not subject to use tax.

(ii) Where a third party makes repairs for a ((manufacturer)) warrantor, the transaction is a wholesale sale and the parts used in the repair are not subject to use tax.

(b) Extended warranties on or after July 1, 2005.

(i) When a repair is made by the warrantor under an extended warranty, the warrantor does not owe use tax on the

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parts or labor provided. This applies when repair is made on or after July 1, 2005 regardless of when the extended warranty was sold.

(ii) When a person other than the warrantor makes a repair for the warrantor after June 30, 2005, the person is making a wholesale sale to the warrantor and use tax is not due.

(iii) The owner of the tangible personal property being repaired under an extended warranty on or after July 1, 2005 is subject to use tax on the charge for the parts and labor supplied. However, the measure of the use tax is limited to the amount of any additional charge or deductible as discussed in section 6 of this rule. Further, if the owner paid retail sales tax on the additional charge or deductible, then use tax will not be due.

(c) Extended warranties on or before June 30, 2005. Extended warranties were previously referred to as nonmanufacturer's ((Nonmanufacturer's)) warranties and manufacturer's warranties not included in the retail selling price of the article being sold.

(i) When a repair is made by the warrantor on or before June 30, 2005 under a separately stated warranty, the warrantor is the consumer of the parts and the parts are subject to use tax measured by the warrantor's cost.

(ii) When a person other than the warrantor makes a repair on or before June 30, 2005 for the warrantor, the person making the repair is making a retail sale to the warrantor. Retail sales tax, not use tax, is collected.

((+e)) (d) Maintenance agreements.

(i) Persons performing services under the requirements of maintenance agreements sold by them, are not subject to use tax or retail sales tax on materials which become a part of the required repairs or services.

((+5)) (6) **Additional service - Deductible.** In the event services are provided in addition to any warranty or maintenance agreement, such services are separately taxable as retail sales, subject to retail sales tax and retailing B&O tax, unless otherwise exempt from the retail sales tax. This includes so-called "deductible" amounts not covered by a warranty, an extended warranty, or maintenance agreement. For example, an additional charge for repairs of equipment that qualifies for the M&E exemption would not be subject to retail sales tax, but retailing B&O tax would apply.

((6)) 7) MIXED AGREEMENTS. If an agreement contains warranty provisions but also requires the actual specific performance of inspection, cleaning, servicing, altering, or improving the property on a regular or irregular basis,

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without regard to the operating condition of the property, such agreements are fully taxable as maintenance agreements, not warranties.

~~((7))~~ (8) **Examples:**

(a) An automobile dealer sells a vehicle to a customer for selling price of \$15,000 cash and the selling price includes a manufacturer's limited warranty for 5 years or 50,000 miles. The owner of the vehicle has \$600 (\$200 parts and \$400 labor) warranty work, paying no deductible, performed by the dealer who is not the manufacturer-warrantor. The tax liability of the dealer is as follows:

(i) Retail sales tax is collected on the \$15,000 selling price.

(ii) The \$15,000 selling price is reported under the retailing B&O tax classification. The \$600 repair is reported under the wholesaling B&O tax classification.

(iii) The \$200 of parts used in the repair are not subject to use tax.

(b) The automobile dealer in example (a) also sells its own extended warranty to the customer for \$200. The dealer insures itself with an insurance carrier and under the policy, claims are paid on the retail value of the repairs. In addition to the repairs in example (a), the customer has the dealer complete \$500 of repairs under the dealer's extended warranty. The customer paid the \$100 deductible and the dealer received \$400 from his insurance carrier. In completing the repair, the dealer installed parts from its inventory which had a cost to the dealer of \$150 and subcontracted part of the repair to an electrical shop which charged the dealer \$200.

(i) If all of the above listed activities occurred on or before June 30, 2005, then the ~~((The))~~ tax liability to the dealer and the subcontractor are as follows:

~~((i))~~A) The dealer reports the \$200 sale of the extended warranty under the service and other activities classification of B&O tax. No retail sales tax is collected on the sale of the extended warranty.

~~((ii))~~B) The \$100 deductible received by the dealer is a retail sale subject to retail sales tax and retailing B&O tax.

~~((iii))~~C) The \$400 received by the dealer from the insurance company is a nontaxable insurance claim reimbursement.

~~((iv))~~D) The dealer is the consumer of the parts removed from its inventory and used in the repair. The \$150 dealer cost of the parts taken from inventory is subject to use tax.

~~((v))~~E) The subcontractor is making a retail sale to the dealer subject to retail sales tax and retailing B&O.

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(ii) If the extended warranty was sold on or before June 30, 2005 and the repairs were performed on or after July 1, 2005, then the tax liability of the parties is as follows:

(A) The dealer reports the \$200 sale of the warranty under the service and other activities classification of B&O tax. No retail sales tax is collected on the sale of the extended warranty.

(B) The \$100 deductible received by the dealer is a retail sale subject to retailing B&O tax and the dealer should collect retail sales tax from the customer.

(C) The \$400 received by the dealer from the insurance company is a nontaxable insurance claim reimbursement.

(D) The dealer does not owe use tax on the parts removed from inventory.

(E) The subcontractor is making a wholesale sale to the dealer and should take a resale certificate documenting the wholesale nature of the transaction.

(iii) If the extended warranty was sold on or after July 1, 2005, then the tax consequences are the same as in (ii) above except that the cost of the extended warranty (\$200) is subject to retailing B&O tax and retail sales tax must be collected from the customer.